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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

AESTHETICA LLC, a Nevada limited liability company,

Plaintiff,

v.

LUNCHBOX, LLC, an Idaho limited liability company; ROCKETBOX LTD., a Nevada limited liability company,

Defendant.

CASE NO.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

(1) Trademark Infringement under 15 U.S.C. § 1114

(2) Unfair Competition under 15 U.S.C. § 1125(a)

(3) State Trademark Infringement under N.R.S. § 600.420

(4) Common Law Trademark Infringement

(5) Deceptive Trade Practices under N.R.S. § 598.0903, et seq.

(6) Intentional Interference with Prospective Economic Advantage

For its complaint, Plaintiff Aesthetica, LLC (“Aesthetica”) alleges as follows:

I. NATURE OF THE CASE

This is an action for trademark infringement, unfair competition and trademark dilution under federal statutes, with pendent state and/or common law claims for trademark infringement, deceptive trade practices, and intentional interference with prospective economic advantage. Aesthetica seeks damages, attorneys’ fees, costs, preliminary and permanent injunctive relief.

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II. JURISDICTION

1. This is an action for trademark infringement and unfair competition arising under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, as amended and under Nevada statutory and common law.

2. This Court has subject matter jurisdiction over this case pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) in that these claims are brought to determine a question of actual controversy between the parties arising under the trademark and unfair competition laws of the United States. This Court has supplemental jurisdiction over Aesthetica's state and common law claims pursuant to 28 U.S.C. § 1367(a).

3. This Court has personal jurisdiction over LunchBOX, LLC ("LunchBOX") based upon the following: (a) it agreed to conduct business in Nevada; (b) it operates a website on the Internet that is accessible to residents of the State of Nevada; (c) the website is interactive in that it seeks to obtain information from web users; and (e) Defendants have committed tortious acts that they knew or should have known would cause injury Aesthetica in the State of Nevada.

4. This Court has personal jurisdiction over Rocketbox Ltd. ("Rocketbox") because it is located in and regularly conducts business in the State of Nevada.

5. Venue properly lies within the unofficial Southern District of the United States District Court for the District of Nevada pursuant to 28 U.S.C. § 1391.

III. PARTIES

6. Plaintiff Aesthetica is a Nevada limited liability company with its place of business located at 430 South Rampart, Suite 150, Las Vegas, Nevada 89145.

7. On information and belief, Defendant LunchBOX, LLC ("LunchBOX") is a limited liability company organized under the laws of the State of Idaho, with its principal place of business at 818 West Idaho Street, Boise, Idaho 83702.

8. On information and belief, Defendant Rocketbox Ltd. ("Rocketbox") is a limited liability company organized under the laws of the State of Nevada, with its principal place of business at 120 South Green Valley Parkway, Suite 174, Henderson, Nevada 89074.

IV. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. Aesthetica was one of the first companies in the industry to build a brand decided solely to bikini waxing, and opened its "BOX" properties in Las Vegas, Nevada, and Manhattan Beach, California.

10. Aesthetica built its brand on a snarky tongue-in-cheek "voice" that capitalized upon the double entendre unique to the subject matter and social mores surrounding depilatory hair removal in more intimate personal areas. This "voice" was used throughout Aesthetica's website located at <bikiniwaxing.com>, on all marketing materials, and even permeated the unique services menu. A true and accurate copy of the home page of "BOX" website is attached hereto as **Exhibit 1** and incorporated by this reference.

11. Since as early as 2000, Aesthetica has continuously used the "BOX" marks in connection with beauty products and depilatory hair removal services, as well as promoting its "BOX" salons. Aesthetica has used and utilized the "BOX" name in signage on the interior and exterior of the properties, as well as on wearing apparel, consumer products, and novelty and promotional items sold and given away at and by the "BOX" properties.

12. Aesthetica is the owner of federally registered trademarks on the Principal Register of the United States Patent and Trademark Office ("USPTO"), including:

a. BOX: Reg. No. 3171153 for (Class 44) "Beauty salon; Health spa services, namely, cosmetic body care services; depilatory hair removal; Skin care salon";

b. BOX (and design): Reg. No. 3732843 for (Class 43) "Cosmetic preparations for body care, and waxes."

True and accurate copies of the foregoing registrations are attached as **Exhibits 2-3**, respectively, and incorporated by reference herein. In addition, Aesthetica also owns registrations in the State of Nevada for the BOX and BOX WAX marks:

c. BOX: Reg. No. E0152792016-8 for (Class 51) "cosmetic preparations for body care, and waxes"

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d. BOX: Reg. No. E0153872016-9 for (Class 100) "Beauty salon; Health spa services, namely, cosmetic body care services; depilatory hair removal; Skin care salon."

e. BOX WAX: Reg. No. E0511622016-4 for (Class 51) "Depilatory wax."

True and accurate copies of the foregoing registrations are attached hereto as **Exhibits 4-6**, respectively, and incorporated by reference herein. Moreover, Aesthetica owns common law rights in all these marks. All of the aforementioned marks are collectively referred to herein as "BOX Family Marks."

13. Aesthetica's federal and state trademark registrations have not been abandoned, canceled, or revoked. Moreover, Aesthetica's BOX federal trademark registrations have become incontestable through the filing of Section 8 and 15 affidavits in the Patent and Trademark Office.

14. Aesthetica has spent substantial sums of money to advertise and promote the BOX Family Marks in print, broadcast media, and on the Internet via its website and social media pages, as well as through various expos, shows, cross-promotions and more.

15. Aesthetica has been featured such magazines as "In-Style," "Luxury," "Racket," Vegas," and "944." Moreover, "BOX" received national attention when it was included on The Travel Channel for many years as a "Top 10" Las Vegas destination to visit. Furthermore, its BOX WAX product is being used and distributed in every MGM Resorts International property.

16. The BOX Family Marks have become distinctive for beauty products and depilatory hair removal services, and have acquired a special significance and meaning to the consuming public as identifying Aesthetica as the source of origin of goods and services that bear the marks.

17. Based on its federal and state trademark registrations and extensive use, Aesthetica owns the exclusive right to use the BOX Family Marks in connection with beauty products and depilatory hair removal services, and related services and goods in the United States.

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18. Aesthetica used the BOX Family Marks in commerce long before the acts of Defendants complained of herein.

19. Upon information and belief, LunchBOX began operations in Idaho in or around October 2010, over a decade after Aesthetica had operating its “BOX” salons.

20. On or about April 18, 2012, LunchBOX filed applications with the USPTO for federal registrations on the LUNCHBOX and LUNCHBOX (design) marks in Class 44 for “Beauty spa services, namely, cosmetic body care; Body waxing services.” The registrations issued in or around December 2012/January 2013, notwithstanding Aesthetica’s existing and prior registrations for the BOX Family Marks.

21. In or around January 2014, LunchBOX filed four more applications with the USPTO for federal registrations on the SOFTBOX, FRESHBOX, BOXBUCKS, and BOX ESSENTIALS marks, which were based upon the existing registrations for LUNCHBOX. The registrations issued in or around July 2014, notwithstanding Aesthetica’s existing and prior registrations for the BOX Family Marks.

22. In each instance, the term BOX is capitalized next to various words in lower case letters, clearly conveying intent to make BOX the dominant portion of the mark and create a family of BOX-formative marks.

23. Moreover, LunchBOX sought to capitalize upon the unique “voice” Aesthetica had created surrounding its brand and used the term BOX with the same snarky tongue-in-check tone as Aesthetica for its branded products, such as SoftBOX (ingrown hair tonic) and FreshBOX (feminine hygiene towelettes):

BOX ESSENTIALS

BOX Essentials Kit

FreshBOX
(tidy-up wipes)

FreshBOX (tidy-up wipes) Pop-Up Canister

SoftBOX - Ingrown Hair Tonic

LunchBOX
(A WAXING SALON)

24. LunchBOX also adopted the same “voice” for its website, located at <lunchboxwax.com>, marketing materials, and promotional goods (pictured below). A true and accurate copy of the home page of LunchBOX website is attached hereto as Exhibit 7 and incorporated by this reference.

Uh, no.
Men love LunchBOX.

25. Upon information and belief, the products and services associated with the LunchBOX’s BOX-formative marks have been and are currently being sold, shipped, or provided in U.S. commerce.

26. LunchBOX uses its marks in such a way as to be confusingly similar in sight, sound and commercial impression to Aesthetica’s BOX Family Marks as to be likely, when applied to the products of LunchBOX, to cause confusion, mistake or deception, leading purchasers of LunchBOX’s goods to the mistaken belief that the goods of LunchBOX emanate from Aesthetica, or are disseminated under Aesthetica’s approval, sponsorship, or control; and leading Aesthetica’s customers, purchasers and members to the mistaken belief that LunchBOX’s LUNCHBOX branded goods are somehow related, endorsed, sponsored by or affiliated with Aesthetica, all to the harm and damage of Aesthetica.

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27. As a result of the similarity between the marks and the close relationship between the goods and services of the parties, purchasers of LunchBOX's products are apt to believe that the BOX-formative products are somehow connected with, or endorsed or sponsored by Aesthetica, to the harm and detriment of Aesthetica.

28. LunchBOX is not affiliated with and is not authorized by Aesthetica to use any of BOX Family Marks in any manner, including, but not limited to, in connection with Internet advertising, brochures, to promote or market LunchBOX's products, and in response to inquiries regarding LunchBOX's products.

29. LunchBOX sells franchises to U.S. buyers and licenses its intellectual property to franchisees, including, but not limited to, the BOX-formative marks. LunchBOX also requires its franchisees to purchase its brand products.

30. Upon information and belief, Rocketbox is a franchisee of LunchBOX, and opened in a "LUNCHBOX" in Henderson, Nevada, in or around the Spring of 2016.

31. From the date the Green Valley location opened, consumers began to confuse Aesthetica's "BOX" salon with Defendants' "LUNCHBOX" salon. Aesthetica has evidence of actual confusion.

32. On or about July 12, 2016, Aesthetica sent LunchBOX a demand letter.

33. After some initial contact, LunchBOX unilaterally changed its name to LUNCHBOX WAX and applied for a federal trademark registration for LUNCHBOX WAX, and ceased any further communication with Aesthetica.

34. By utilizing the BOX Family Marks in the manner described above, Defendants, and each of them, are attempting to trade on the goodwill of BOX Family Marks and Aesthetica's reputation.

35. By utilizing advertising containing the BOX Family Marks, Defendants, and each of them, are attempting to create an association between their product offerings and BOX Family Marks owned by or affiliated with Aesthetica.

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V. CLAIMS FOR RELIEF

COUNT I
Trademark Infringement under the Lanham Act, 15 U.S.C. § 1114

36. Aesthetica incorporates the allegations in the preceding paragraphs as if fully set forth herein.

37. Defendants, and each of them, have used and/or is using in commerce the BOX Family Marks, and, thus, are confusingly similar to Aesthetica's federal registrations for these trademarks.

38. Defendants, and each of them, have used in commerce the BOX Family Marks and/or marks confusingly similar to these trademarks for their products, which constitutes a reproduction, copying, counterfeiting, and colorable imitation of Aesthetica's federal trademark registrations in a manner that is likely to cause confusion or mistake or is likely to deceive consumers.

39. By using the BOX Family Marks and/or marks confusingly similar to Aesthetica's federally registered marks, with the knowledge that Aesthetica owns and has used, and continues to use, its trademarks across the United States, Defendants, and each of them, have intended to cause confusion, cause mistake, or deceive consumers.

40. Defendants, and each of them, are using marks that are the same and/or confusingly similar to the BOX Family Marks in connection with the sale, offering for sale, or advertising of services in a manner that is likely to cause confusion or mistake, or to deceive consumers as to an affiliation, connection, or association with Aesthetica, or as to the origin, sponsorship, or approval of Defendants' commercial activities by Aesthetica.

41. Defendants, and each of them, are also using marks that are the same and/or confusingly similar to the BOX Family Marks to cause initial interest confusion and divert Internet users away from Aesthetica's website and to LunchBOX's website.

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42. Defendants' use of BOX Family Marks and /or marks confusingly similar to the BOX Family Marks has created a likelihood of confusion among consumers who may falsely believe that BOX Family Marks are associated with Defendants, or that Aesthetica sponsors or approves of Defendants' services or commercial activities.

43. As a direct and proximate result of Defendants', and each of their, infringement, Aesthetica has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

COUNT II
Unfair Competition and False Designation of Origin under the Lanham Act, 15 U.S.C. § 1125(a)

44. Aesthetica incorporates the allegations in the preceding paragraphs as if fully set forth herein.

45. Defendants, and each of their, use in commerce of marks that are the same and/or confusingly similar to the BOX Family Marks in connection with LunchBOX's website and advertising, as well as LunchBOX's products, constitutes a false designation of origin and/or a false or misleading description or representation of fact, which is likely to cause confusion, cause mistake, or deceive as to affiliation, connection, or association with Aesthetica, or as to the origin, sponsorship, or approval of Defendants' commercial activities by Aesthetica.

46. Defendants, and each of their, use in commerce of Aesthetica's BOX Family Marks marks and/or marks confusingly similar to these marks with the knowledge that Aesthetica owns and has used, and continues to use, its trademarks constitutes intentional conduct by Defendants, and each of them, to make false designations of origin and false descriptions about their commercial activities.

47. As a direct and proximate result of such unfair competition, Aesthetica has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

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COUNT III
State Trademark Infringement under N.R.S. 600.420

48. Aesthetica incorporates the allegations in the preceding paragraphs as if fully set forth herein.

49. Aesthetica holds State of Nevada trademark registrations for the BOX Family Marks.

50. Defendants, and each of them, have used and/or are using Aesthetica's BOX Family Marks, or marks confusingly similar to Aesthetica's marks, in the State of Nevada. Such use is in connection with Defendants' commercial activities, including, but not limited to, their products, website, and advertising.

51. Defendants, and each of their, non-consensual use of the BOX Family Marks, and/or marks confusingly similar to the BOX Family Marks confuses consumers, constitutes a reproduction, copying, and/or counterfeiting, and is a colorable imitation of the BOX Family Marks in a manner that is likely to deceive consumers.

52. By using the BOX Family Marks, and/or marks confusingly similar to the BOX Family Marks, with the knowledge that Aesthetica owns, has used, and continues to use, its trademarks in Las Vegas and across Nevada, Defendants are likely to cause confusion, cause mistake, and/or deceive consumers as to the origin, sponsorship, affiliation or approval of Defendants' commercial activities by Aesthetica.

53. Defendants, and each of their, use of BOX Family Marks have created a likelihood of confusion among consumers who may falsely believe that LunchBOX's website and commercial activities are associated with Aesthetica, or that Aesthetica sponsors or approves of LunchBOX's website or commercial activities.

54. As a direct and proximate result of LunchBOX's infringement, Aesthetica has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

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COUNT IV
Common Law Trademark Infringement

55. Aesthetica incorporates the allegations in the preceding paragraphs as if fully set forth herein.

56. By virtue of having used and continuing to use BOX Family Marks, Aesthetica has acquired common law trademark rights in the BOX Family Marks.

57. Defendants, and each of their, use of marks the same and/or confusingly similar to BOX Family Marks infringes Aesthetica's common law rights in BOX Family Marks and is likely to cause confusion, mistake, or deception among consumers, who will believe that Defendants' commercial activities originate from, or are affiliated with, or endorsed by Aesthetica, when, in fact, they are not.

58. As the direct and proximate result of Defendants, and each of their, infringement of Aesthetica's common law trademark rights under Nevada and other common law, Aesthetica has suffered, and will continue to suffer, monetary damages and irreparable injury to its business, reputation, and goodwill.

COUNT V
Deceptive Trade Practices under N.R.S. § 598.0915

59. Aesthetica incorporates the allegations in the preceding paragraphs as if fully set forth herein.

60. Upon information and belief, in the course of conducting its business, Defendants, and each of them, knowingly made false representations as to an affiliation, connection and/or association with Aesthetica by using a mark identical and/or confusingly similar to BOX Family Marks and otherwise engaged in deceptive trade practices.

61. As the direct and proximate result of Defendants, and each of their, deceptive conduct, Aesthetica has suffered, and will continue to suffer, monetary damages and irreparable injury to its business, reputation, and goodwill.

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COUNT VI
Interference with Prospective Economic Advantage

62. Aesthetica incorporates the allegations in the preceding paragraphs as if fully set forth herein.

63. Upon information and belief, at the time Defendants, and each of them, adopted and began using marks that are the same and/or confusingly similar to the BOX Family Marks and since that time, they knew and have known that Aesthetica is in the business of providing salon, beauty products and depilatory hair removal services using the BOX Family Marks.

64. Upon information and belief, Defendants, and each of them, committed acts intended or designed to disrupt Aesthetica's prospective economic advantage arising from providing these services.

65. Defendants, and each of their, actions have disrupted or are intended to disrupt Aesthetica's business by, among other things, using the BOX Family Marks to divert sales and deceive consumers.

66. Defendants, and each of them, have no legal right, privilege or justification for their conduct.

67. As a direct and proximate result of Defendants' interference with Aesthetica's prospective economic advantage, Aesthetica has suffered, and will continue to suffer, monetary damages and irreparable injury.

68. Based on the intentional, willful and malicious nature of LunchBOX's actions, Aesthetica is entitled to recover monetary damages, exemplary or punitive damages and reasonable attorneys' fees and costs incurred in connection with this action.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all issues so triable.

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VI. PRAYER FOR RELIEF

WHEREFORE, Aesthetica respectfully prays that the Court grant the following relief:

A. A preliminary and permanent injunction prohibiting Defendants, and each of them and their respective officers, agents, servants, employees and/or all persons acting in concert or participation with them, from using BOX Family Marks or confusingly similar variations thereof, alone or in combination with any other letters, words, letter strings, phrases or designs, in commerce or in connection with any business or for any purpose whatsoever;

B. An award of compensatory, consequential, statutory, and/or punitive damages to Aesthetica in an amount to be determined at trial;

C. An award of interest, costs and attorneys' fees incurred by Aesthetica in prosecuting this action; and

E. All other relief to which Plaintiff is entitled.

DATED: April 13, 2017

Respectfully submitted,

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